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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANK PEREZ SANTIAGO,

Defendant and Appellant.

E046735

(Super.Ct.No. INF057232)

OPINION

APPEAL from the Superior Court of Riverside County. B.J. Bjork, Judge.

(Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art.

VI, § 6 of the Cal. Const.) Affirmed.

Richard Power, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Collette C. Cavalier, and Kristen Kinnaird Chenelia, Deputy Attorneys General, for Plaintiff and Respondent.

On May 7, 2008, a jury found defendant and appellant Frank Perez Santiago guilty of being a felon in possession of a firearm under Penal Code¹ section 12021, subdivision (a)(1) (count 1); and being a felon in possession of ammunition under section 12316, subdivision (b)(1) (count 2). Defendant admitted five prison prior convictions under section 667.5, subdivision (b). In a bifurcated proceeding, the jury found true that defendant had previously been convicted of two strike prior convictions within the meaning of sections 667, subdivisions (c) and (e)(1), and 1170.12, subdivision (c).

On September 19, 2008, the trial court denied defendant's motion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, and sentenced him to 25 years to life in prison. The trial court also ordered defendant's five prison priors stricken upon agreement by the parties. Defendant was also sentenced to an additional two years in prison under a plea agreement on another case.

On appeal, defendant contends that the trial court abused its discretion in denying his *Romero* motion. For the reasons set forth below, we shall affirm the judgment.

I

FACTUAL AND PROCEDURAL HISTORY

On February 1, 2007, about 11:30 a.m., deputies of the Riverside County Sheriff's Department were dispatched to the Castro Trailer Park in Coachella, in response to suspicious circumstances involving a Hispanic male on a bicycle heading south from the trailer park.

¹ All statutory references are to the Penal Code unless otherwise specified.

Investigator Alfredo Verduzco saw defendant, who matched the description given by dispatch. Sergeant Hignight, who was also in the area, pulled over in his patrol car and approached defendant. Defendant dismounted his bike and ran with his bike to his side. Attached to the bike was a canvas bag. Investigator Verduzco joined the pursuit. Defendant reached into his waistband and dropped his bike when he reached the railroad tracks. Defendant then headed towards some bushes. Investigator Verduzco found defendant hiding in the bushes and arrested him.

From defendant's bag, Sergeant Hignight recovered 46 rounds of .357 hollow point Winchester ammunition, one additional round of a different brand, clothing, and a shoe. Investigator Verduzco found a .357 revolver handgun loaded with five rounds about five feet from where he had detained defendant. The ammunition in the gun matched the ammunition found in defendant's bag.

Deputy McKenzie Berry interviewed defendant at the police station. Defendant denied knowledge of the gun and denied being at the Castro Trailer Park. The match to the shoe in defendant's bag was found at the trailer park, near space No. 35.

The parties stipulated that defendant had previously been convicted of a felony, and that the deputies were investigating a call referencing suspicious activity.

II

ANALYSIS

Defendant's sole contention on appeal is that the trial court abused its discretion in denying defendant's *Romero* motion to strike one or more prior strikes. We disagree.

A trial court's decision whether or not to dismiss or strike a prior serious and/or violent felony conviction allegation under section 1385 is reviewed for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 376 (*Carmony*)). “In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, “[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.” [Citations.] Second, a “decision will not be reversed merely because reasonable people might disagree. ‘An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’” [Citations.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at pp. 376-377, quoting *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978, quoting *People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831, and *People v. Preyer* (1985) 164 Cal.App.3d 568, 573; see also *People v. Myers* (1999) 69 Cal.App.4th 305, 309 (*Myers*)).

The California Supreme Court explained, “In light of this presumption, a trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances. For example, an abuse of discretion occurs where the trial court was not ‘aware of its discretion’ to dismiss [citation], or where the court considered

impermissible factors in declining to dismiss [citation].” (*Carmony, supra*, 33 Cal.4th at p. 378, citing *People v. Langevin* (1984) 155 Cal.App.3d 520, 524, and *People v. Gillispie* (1997) 60 Cal.App.4th 429, 434.) Discretion is also abused when the trial court’s decision to strike or not to strike a prior is not in conformity with the “spirit” of the law. (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*); *Myers, supra*, 69 Cal.App.4th at p. 310.)

But “[i]t is not enough to show that reasonable people might disagree about whether to strike one or more of his prior convictions. Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court’s ruling, even if we might have ruled differently in the first instance. [Citation.]” (*Myers, supra*, 69 Cal.App.4th at p. 310.) “Because the circumstances must be ‘extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack’ [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary.” (*Carmony, supra*, 33 Cal.4th at p. 378, quoting *People v. Strong* (2001) 87 Cal.App.4th 328, 338.)

The touchstone of the analysis must be “whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be

deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*Williams, supra*, 17 Cal.4th at p. 161; see also *People v. Garcia* (1999) 20 Cal.4th 490, 498-499.) A decision to dismiss a strike allegation based on its remoteness in time is an abuse of discretion where the defendant has not led a life free of crime since the time of his conviction. (*People v. Humphrey* (1997) 58 Cal.App.4th 809, 813.)

Defendant contends the court should have granted his request to strike one or more of his prior strike convictions because his extensive criminal history is a result of defendant's chronic drug addiction, his convictions do not involve crimes of serious violence, his prior strike convictions were not considered strikes at the time of their commission, and his present convictions do not involve violence.

We cannot conclude the trial court abused its discretion in declining to strike one or more of defendant's prior strike convictions. The relevant considerations supported the trial court's ruling, and there is nothing in the record to show that the court declined to exercise its discretion on improper reasons or that it failed to consider and balance the relevant factors, including defendant's personal and criminal background. In fact, the record clearly shows the court was aware of its discretion, aware of the applicable factors a court must consider in dismissing a prior strike, and appropriately applied the factors as outlined in *Williams*.

This case is far from extraordinary. Defendant has manifested a persistent inability to conform his conduct to the requirements of the law. Though defendant's

current crimes can be characterized as nonviolent, defendant has a serious prior record of criminal behavior. Since 1984, defendant had 18 convictions. Most notable are his six felony convictions: first degree burglary (1986); possession of a controlled substance (1989); receiving stolen property (1992); possession of a controlled substance (1993); possession of controlled substance in custody (1993); and criminal threats (1999). The prior felony convictions for first degree burglary and criminal threats are his two strike priors. Defendant also has 12 misdemeanor convictions. Defendant's record also indicates that defendant was granted parole or probation in numerous occasions and defendant violated the terms of his parole or probation. In sum, since 1984, defendant has been in and out of prison, having committed numerous felony and misdemeanor offenses and having repeatedly violated probation and parole. In fact, defendant's criminal record shows that he has spent most of the last 25 years in the criminal justice system and continued to commit crimes and violate his parole and probation.

The court here could not overlook the fact that defendant continued to commit serious criminal offenses and violate the terms and conditions of his probation and parole even after repeatedly serving time in prison. His conduct as a whole was a strong indication of unwillingness or inability to comply with the law. He has shown his continual disregard for the law as evidenced by his continual parole and probation violations and criminal convictions. It is clear from the record that prior rehabilitative efforts have been unsuccessful for defendant. Indeed, defendant's prospects for the future look no better than the past, in light of defendant's record of prior offense and

reoffense. All of these factors were relevant to the trial court's decision under *Romero*; there is no indication from the record here that the court failed to consider the relevant factors or that it failed to properly balance the relevant factors or that it abused its discretion in determining that, as a flagrant recidivist, defendant was not outside the spirit of the three strikes law. (*Williams, supra*, 17 Cal.4th at p. 161.)

Indeed, defendant appears to be “an exemplar of the ‘revolving door’ career criminal to whom the Three Strikes law is addressed.” (*People v. Stone* (1999) 75 Cal.App.4th 707, 717.) Thus, given defendant's continuous criminal history, his numerous parole and probation violations, the seriousness of the past and present offenses, and his seemingly dim prospects for rehabilitation and lack of meaningful crime-free periods, we cannot say that the trial court abused its discretion when it declined to dismiss another one of defendant's prior strike convictions. The trial court's decision not to strike defendant's priors was neither irrational nor arbitrary.

In short, defendant was within the spirit of the three strikes law (see *Williams, supra*, 17 Cal.4th at p. 161), the trial court did not rule in an “arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice” (see *People v. Jordan* (1986) 42 Cal.3d 308, 316), and we find no abuse of discretion (see *Romero, supra*, 13 Cal.4th at p. 504).

III

DISPOSITION

The judgment is affirmed.

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/s/ McKinster
J.

We concur:

/s/ Hollenhorst
Acting P.J.
/s/ Miller
J.